IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ARMSTRONG WORLD INDUSTRIES, INC., Plaintiff,	:	
v.	:	**Civil No. 97-3914**
SOMMER ALLIBERT, S.A., MARC ASSA, and TARKETT AG, Defendants.	:	

MEMORANDUM OPINION

Cahn, C.J. April ___, 1998

Plaintiff Armstrong World Industries, Inc., ("Armstrong") and Defendant Sommer Allibert, S.A. ("Sommer"), are embroiled in an international controversy. Armstrong moves this court to enjoin Sommer from continuing to pursue an action in the Commerce Court of Nanterre ("the French action"), and an action in the Superior Court of the Province of Quebec ("the Quebec action"), against Armstrong. After careful consideration of the briefs, and after oral argument, the court now denies Armstrong's Motion for Antisuit Injunction ("the Motion").

I. BACKGROUND

The facts of this case are set forth in this court's prior opinion, see Armstrong World Industries, Inc. v. Sommer Allibert, S.A., Assa, and Tarkett AG, No. CIV. 97-3914, 1997 WL 793041 (E.D. Pa. Nov. 26, 1997), and five-page Order dated March 9, 1998. What follows is a summary of facts relevant to the Motion.

At the time Armstrong initiated this case, June 9, 1997, Defendants Sommer and Tarkett competed with Armstrong in the worldwide flooring industry.[1] Armstrong alleges,[2] inter alia, that in negotiating and agreeing to combine with Tarkett, Sommer breached the Confidentiality Agreement that Armstrong and Sommer entered into during the course of negotiations regarding an Armstrong-Sommer business transaction. In addition to filing the present action, Armstrong also made an unsolicited tender offer for Domco, Inc. ("Domco"), a Canadian corporation controlled by Sommer. Subsequent events related to this offer spurred Armstrong to initiate proceedings, on June 23, 1997, in the Ontario Court, the Ontario Securities Commission, and the Quebec Securities Commission.[3]

On July 7, 1997, Sommer initiated the Quebec action. (See Pl's Ex. B.) According to Sommer, shortly after learning of Sommer's and Tarkett's plans to combine their flooring businesses, Armstrong "launched an all out attack, both on the media and legal level . . . to block the [Sommer-Tarkett] merger and resorted to defamation and abuses of procedure in order to

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[1]Sommer and Tarkett combined their flooring businesses on December 3, 1997, after this court denied Armstrong's Motion for Preliminary Injunction on November 26, 1997.

[2]On July 7, 1997, Armstrong filed a First Amended Complaint, and on April 3, 1998, Armstrong filed a Second Amended Complaint. On April 8, 1998, Sommer and Assa filed an Answer, and Sommer filed Counterclaims. The substance of Sommer's counterclaims is not relevant to the Motion.

[3]Domco did not consent to jurisdiction in this court.

achieve its ends." (Def's Ex. 19, Re-Am. Decl. ¶ 42.)[4] On August 26, 1997, Sommer initiated the French action. Sommer seeks relief from Armstrong's alleged defamation. In Sommer's words, "[c]ontrary to ARMSTRONG's unfounded statements, SOMMER ALLIBERT has not damaged the interests of the minority shareholders of DOMCO, nor violated any exclusivity agreement any more than it has violated the confidentiality agreement of September 19, 1996."[5] (Pl's Exh. D, Summons at 6.)

Armstrong now seeks to stop Sommer from pursuing the Quebec and French actions. These foreign actions are in their incipient stages, and trials are not expected to begin before September 15, 1998, the trial date in the instant case.

II. DISCUSSION

Although the issue of when a district court may issue an antisuit injunction is one upon which the courts of appeal disagree, compare e.g., Laker Airways Ltd. v. Sabena, Belgian World Airlines, 731 F.2d 909, 927 (D.C. Cir. 1984); Gau Shan Co. v. Bankers Trust Co., 956 F.2d 1349, 1355 (6th Cir. 1992); China Trade and Dev. Corp. v. M.V. Choong Yong, 837 F.2d 33, 36 (2d

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[4]Armstrong and Sommer disagree about the scope of Sommer's claims in the Quebec action. Armstrong believes that Sommer is suing Armstrong for the Quebec equivalent of defamation, abuse of process, and breach of the Confidentiality Agreement. Sommer represents that it is not suing Armstrong, in the Quebec action, for any breach of the Confidentiality Agreement, or for abuse of process based on the instant action. The court need not resolve this issue.

[5]Whether Sommer also claims that Armstrong breached the Confidentiality Agreement is not necessary to resolve.

Cir. 1987) with e.g., Kaepa, Inc. v. Achilles Corp., 76 F.3d 624, 627-28 (5th Cir. 1996); Seattle Totems Hockey Club, Inc. v. National Hockey League, 652 F.2d 852, 856 (9th Cir. 1981), the controlling decision in this circuit is Compagnie Des Bauxites de Guinea v. Insurance Co. of North America, 651 F.2d 877 (3d Cir. 1981), cert. denied, 457 U.S. 1105 (1982). In Bauxites, CBG, a company that mines and sells bauxite in the Republic of Guinea, sued its excess insurers ("the insurers") in the Western District of Pennsylvania ("the Western District") because the insurers allegedly improperly refused a claim. See 651 F.2d at 880. About four years later, the insurers sued in England to rescind the insurance contract because CBG allegedly failed to disclose material facts. See id. The district court enjoined the insurers from continuing to pursue the English action. See id. The court of appeals reversed, holding that "duplication of issues and the insurers' delay in filing the London action were the sole bases for the district court's injunction . . . . [T]hese factors alone did not justify the breach of comity among the courts of separate sovereignties." Id. at 887. As the court explained, the general rule is that "one court will not interfere with or try to restrain proceedings in another in an ordinary action in personam." Id. Rather, if parallel cases are proceeding in multiple jurisdictions, the judgment reached in one action will be asserted as res judicata in the other. See id. In sum, duplication of issues and harassment do not justify interfering with an in personam action in a foreign court.

One court in this circuit has had the opportunity to apply Bauxites. See I.J.A., Inc. v. Marine Holdings Ltd., 546 F. Supp. 608 (E.D. Pa. 1981). In I.J.A., the court denied the plaintiffs' request to enjoin the defendants from pursuing litigation that the defendants had instituted in Canada, because the plaintiffs failed to present arguments other than those rejected by the court in Bauxites. Judge Troutman explained that even if

> this Court were to find that the Canadian litigation is duplicative, involving the same parties, involving the same issues, vexatious and of a harassing nature, damaging to plaintiffs' reputation and to its line of credit and business reputation as alleged throughout plaintiffs' complaint, we would be obliged nonetheless to deny injunctive relief.

Id. at 610.

Armstrong's thrust is that the case sub judice presents circumstances that distinguish it from Bauxites and I.J.A., and justify an antisuit injunction. (See Hr'g Tr. at 8, 62.) Armstrong contends that Sommer's claims in the Quebec and French actions are compulsory counterclaims pursuant to Fed. R. Civ. P. 13(a), and, therefore, must be asserted in this court. In addition, Armstrong argues that Sommer consented to jurisdiction in this court, whereas the insurers in Bauxites did not consent to jurisdiction in the Western District. Neither argument is persuasive.

Assuming arguendo that Sommer's claims in the Quebec and French actions are compulsory counterclaims, Bauxites is not distinguishable. In Bauxites, the insurers' English claim was a compulsory counterclaim. A compulsory counterclaim is a claim

that "arises out of the transaction or occurrence that is the subject matter of the opposing party's claim." Fed. R. Civ. P. 13(a). As the Court of Appeals for the Third Circuit has explained, "a counterclaim is compulsory if it bears a logical relationship to an opposing party's claim. . . . [A] counterclaim is logically related to the opposing party's claim where separate trials on each of their respective claims would involve a substantial duplication of effort and time by the parties and the courts." Great Lakes Rubber Corp. v. Herbert Cooper Co., 286 F.2d 631, 634 (3d Cir. 1961) (quotation marks and citations omitted). The insurers' action in Bauxites to rescind the insurance contract was logically related to CBG's action on the contract. See National Equip. Rental, Ltd. v. Fowler, 287 F.2d 43, 45 (2d Cir. 1961) (holding that lessee's fraud in the inducement claim should have been pleaded as a compulsory counterclaim where lessor's original claim was for breach of the lease); 6 Charles Allen Wright, Arthur R. Miller, & Mary Kay Kane, Federal Practice and Procedure § 1410 (1990) ("When the same contract serves as the basis for both the claims and the counterclaims, the logical relationship standard . . . has been satisfied."). Thus, Armstrong's contention that the instant case differs from Bauxites because the instant case involves a compulsory counterclaim does not stand to reason.

Armstrong's second argument is that Sommer consented to suit here, whereas the insurers in Bauxites did not consent to suit in the Western District. In Bauxites, the district court found that

it possessed personal jurisdiction over the insurers for two reasons. See id. at 880, 886 & n.9. First, the district court held it had personal jurisdiction pursuant to Pennsylvania's long-arm statute. See id. at 880 & n.9. Second, the district court sanctioned the insurers for discovery violations by taking, as established, facts that would support the court's exercise of personal jurisdiction over them. See id. at 880. The court of appeals upheld the district court's exercise of jurisdiction as a result of the sanctions. See id. at 885-86.[6] Although the court did not reach the issue, the court suggested in dictum that personal jurisdiction existed pursuant to Pennsylvania's long-arm statute. See id. at 886 n.9. The court noted that twenty-four insurance policies written for CBG, "in which various excess insurers participated," were delivered in Pennsylvania, and eighteen of these policies contained clauses in which "the insurers agreed to be subject either to the jurisdiction of the American courts or to arbitrate policy disputes here." Id. Thus, the court opined that the insurers may have implicitly or explicitly consented to jurisdiction in the Western District. Sommer, having explicitly consented to this court's jurisdiction in the Confidentiality Agreement, is not in a position that is

[6]The court held that the district court properly exercised jurisdiction over eighteen of the twenty-one insurers. The other three insurers had complied with the court's discovery order, and lacked the requisite minimum contacts with Pennsylvania to support the court's exercise of personal jurisdiction. See 651 F.2d at 880 n.2.

meaningfully different from the position of the insurers in Bauxites.

III. CONCLUSION

A motion for an antisuit injunction raises difficult questions about what circumstances justify the breach of international comity that results when a court enjoins a litigant from pursuing a foreign action. The court does not, however, resolve this delicate issue because the instant case cannot be distinguished meaningfully from Bauxites.

An appropriate order follows.

BY THE COURT:

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Edward N. Cahn, C.J.

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And now, this _____ day of April, 1998, upon consideration of Plaintiff's Motion for Antisuit Injunction, Sommer's response thereto, and Armstrong's reply; Armstrong's and Sommer's letters to this court dated March 24, 1998; and following oral argument, it is hereby ORDERED that the Motion is DENIED.

BY THE COURT:

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Edward N. Cahn, C.J.